

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MDL No. 2859

ZIMMER M/L TAPER HIP PROSTHESIS OR M/L TAPER  
HIP PROSTHESIS WITH KINECTIV TECHNOLOGY AND  
VERSYSFEMORAL HEAD PRODUCTS LIABILITY  
LITIGATION

18-MD-2859 (PAC)  
18-MC-2859 (PAC)

**SHORT FORM  
COMPLAINT AND  
JURY DEMAND**

*This Document Relates to:*

DENNIS FOLEY AND  
DONNA FOLEY,

**CASE NO.: 1:21-cv-07036**

PLAINTIFFS,

v.

ZIMMER, INC., ZIMMER US, INC.,  
AND ZIMMER BIOMET HOLDINGS, INC.,  
f/k/a ZIMMER HOLDINGS, INC.,

DEFENDANTS.

-----X

1. Plaintiffs, Dennis Foley and Donna Foley, state and bring this civil action in MDL No. 2859, entitled *In Re: Zimmer M/L Taper Hip Prosthesis or M/L Taper Hip Prosthesis with Kinectiv Technology and Versys Femoral Head Products Liability Litigation*, against Defendants Zimmer, Inc., Zimmer US, Inc., and Zimmer Biomet Holdings, Inc.

2. Plaintiffs are filing this Short Form Complaint as permitted by this Court's Case Management Order 9, dated February 7, 2019, and hereby incorporates the Master Long Form Complaint filed in MDL No. 2859 by reference.

**PARTIES, JURISDICTION AND VENUE**

3. Plaintiff, Dennis Foley, is a resident and citizen of the State of Illinois, and claims damages as set forth below.

4. Plaintiff's Spouse, Donna Foley, is a resident and citizen of the State of Illinois, and claims damages as set forth below.

5. Venue of this case is appropriate in the United States District Court, Northern District of Illinois. Plaintiff states that but for the Order permitting directly filing into the Southern District of New York pursuant to Case Management Order 9, Plaintiff would have filed in the United States District Court, Northern District of Illinois. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

6. Plaintiff brings this action:

  X   On behalf of himself;

~~\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.~~

**FACTUAL ALLEGATIONS**

**ALLEGATIONS AS TO RIGHT-SIDE IMPLANT/EXPLANT SURGERY(IES):**

7. ~~\_\_\_\_\_ Plaintiff was implanted with a Versys Femoral Head in his/her right hip on or about \_\_\_\_\_ (date), at the \_\_\_\_\_ (medical center and address), in \_\_\_\_\_, by Dr. \_\_\_\_\_.~~

8. ~~Plaintiff was implanted with the following femoral stem during the \_\_\_\_\_ (date) implantation surgery:~~

~~\_\_\_\_\_ Zimmer M/L Taper~~

~~\_\_\_\_\_ Zimmer M/L Taper with Kinectiv Technology~~

9. ~~Plaintiff had the following right hip components explanted on or about \_\_\_\_\_ (date), at \_\_\_\_\_ (medical center and address) by Dr. \_\_\_\_\_.~~

~~\_\_\_\_\_ Versys femoral head~~

~~\_\_\_\_\_ Zimmer M/L Taper~~

~~\_\_\_\_\_ Zimmer M/L Taper with Kinectiv Technology~~

10. ~~Plaintiff will have the right hip components at issue explanted on or about \_\_\_\_\_, at \_\_\_\_\_ (medical center and address) by Dr. \_\_\_\_\_.~~

11. ~~Plaintiff has not yet scheduled a surgery for explantation of the right hip components at issue.~~

ALLEGATIONS AS TO LEFT-SIDE IMPLANT/EXPLANT SURGERY(IES):

12. Plaintiff was implanted with a Versys Femoral Head in his left hip on or about July 5, 2011, at Central DuPage Hospital, 25 North Winfield Road, in Winfield, Illinois, by Dr. Scott M. Sporer.

13. Plaintiff was implanted with the following femoral stem during the July 5, 2011 implantation surgery:

  X   Zimmer M/L Taper

       Zimmer M/L Taper with Kinectiv Technology

14. Plaintiff had the following left hip components explanted on or about October 22,

2019, at Elmhurst Hospital, 155 E. Brush Hill, Elmhurst, Illinois, by Dr. Scott M. Sporer.

  X   Versys femoral head

           Zimmer M/L Taper

           Zimmer M/L Taper with Kinectiv Technology

~~15. Plaintiff will have the left hip components at issue explanted on or about~~  
~~\_\_\_\_\_, at \_\_\_\_\_ (medical center and address) by Dr.~~  
~~\_\_\_\_\_.~~

~~16. Plaintiff has not yet scheduled a surgery for explantation of the left hip components~~  
~~at issue.~~

**ALLEGATIONS AS TO INJURIES**

17. (a) Plaintiff claims damages as a result of:

  X   INJURY TO HIMSELF

           INJURY TO THE PERSON REPRESENTED

           WRONGFUL DEATH

           SURVIVORSHIP ACTION

  X   ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of:

  X   LOSS OF SERVICES

  X   LOSS OF CONSORTIUM

18. Plaintiff has suffered injuries as a result of implantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

19. Plaintiff has suffered injuries as a result of the explantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

20. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiffs.

21. Due to the nature of the defect, Plaintiffs could not have known that the injuries he suffered were as a result of a defect in the Devices at issue at the time they were implanted or for any period afterwards until the defect was actually discovered by Plaintiffs.

**CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

22. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference from the Master Long Form Complaint:

|              |                                                              |
|--------------|--------------------------------------------------------------|
| <u>  X  </u> | COUNT I - NEGLIGENCE;                                        |
| <u>  X  </u> | COUNT II - NEGLIGENCE PER SE;                                |
| <u>  X  </u> | COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN;    |
| <u>  X  </u> | COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT; |
| <u>  X  </u> | COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN;        |
| <u>  X  </u> | COUNT VI - BREACH OF EXPRESS WARRANTY;                       |
| <u>  X  </u> | COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY;         |
| <u>  X  </u> | COUNT VIII - BREACH OF IMPLIED WARRANTIES;                   |
| <u>  X  </u> | COUNT IX - VIOLATION OF CONSUMER PROTECTION LAWS             |

|               |                                      |
|---------------|--------------------------------------|
| <u>  X  </u>  | COUNT X –NEGLIGENT MISREPRESENTATION |
| <u>  X  </u>  | COUNT XI- FRAUDULENT CONCEALMENT     |
| <u>  X  </u>  | COUNT XII - UNJUST ENRICHMENT        |
| <u>  X  </u>  | COUNT XIII – LOSS OF CONSORTIUM      |
| <u>      </u> | COUNT XIV – WRONGFUL DEATH           |
| <u>      </u> | COUNT XV- SURVIVAL ACTION            |

In addition to the above, Plaintiffs assert the following additional causes of action under applicable state law:

|               |                   |
|---------------|-------------------|
| <u>  X  </u>  | PUNITIVES DAMAGES |
| <u>      </u> | OTHER: _____      |
|               | _____             |
|               | _____             |
|               | _____             |

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys’ fees and costs;
4. For prejudgment interest and costs of suit;
5. Exemplary damages;
6. For restitution and disgorgement of profits; and,
7. For such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Date: August 20, 2021

Respectfully submitted,

BY: /s/ Genevieve M. Zimmerman

Genevieve M. Zimmerman (MN# 330292)

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